

# EXHIBIT 4

The Honorable Laura C. Inveen

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

D.F.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole; LDS SOCIAL SERVICES a/k/a LDS  
FAMILY SERVICES, a Utah corporation; and  
the "MORMON CHURCH" THE CHURCH  
OF JESUS CHRIST OF LATTER-DAY  
SAINTS, an unincorporated association,

Defendants.

NO. 06-2-18131-0 KNT

DEFENDANT COP'S MOTION FOR  
RECONSIDERATION

I. INTRODUCTION

On February 9, 2007, this Court denied Defendant COP's Motion to Dismiss the unincorporated Church from this action. In its oral remarks, the Court indicated that it believed a fact question existed as to whether the Church was "doing business" in the state of Washington. Whether the Church is doing business determines whether plaintiff has properly served the Church. If the Church is not doing business, plaintiff's service of a Church agent is not proper under RCW 4.28.080(10) and the Church's motion to dismiss should be granted.

DEFENDANTS' MOTION FOR RECONSIDERATION - 1

GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Phone (206) 467-6477  
Fax (206) 467-6292

**COPY**

COP respectfully requests that this Court vacate its order, and grant COP's motion, because: (1) despite plaintiff's *argument* that the Church does business in the State of Washington, there is no *evidence in the record* to support this contention; and (2) whether service has been effected is a jurisdictional question that must be resolved as a matter of law by the Court, not the jury. To the extent that the Court believes a fact question exists as to the propriety of service, it should vacate its order denying the motion and resolve the issue itself after an evidentiary hearing.

## II. EVIDENCE RELIED UPON

The Declaration of Paul D. Rytting, and Second Declaration of Paul D. Rytting, both previous filed with the motion under reconsideration.

## III. ARGUMENT

### A. Plaintiff Presented No Facts from which the Court Could Conclude a Fact Question Existed.

Clearly, the parties disagree regarding whether the Church does business in this state. However, plaintiff presented *no factual evidence* to support his position, and thus there is no basis from which the Court could conclude that a fact question exists.

If the Court reviews the evidence submitted by plaintiff in opposition to COP's motion, the Court will look in vain for *any* indicia that the Church is doing business in this state. Plaintiff presented none of the following: (a) pay stubs indicating that the Church employs persons in this state; (b) real property records indicating that the Church owns property in this state; (c) contracts to which the Church is a party; or (d) bank accounts in the name of the Church.

1           **1. Cases from Other Jurisdictions Say Nothing about Church Dealings in**  
 2           **Washington.**

3  
 4           Plaintiff's claim that the Church is doing business rests on three propositions. First,  
 5  
 6 plaintiff argues the Church must be "doing business" in Washington because it has been  
 7  
 8 characterized in other lawsuits as having engaged in a property transaction or having employees.  
 9  
 10 As discussed in prior briefing and oral argument, this is not true—these cases reflect nothing  
 11  
 12 more than inattention by the parties to those cases to the fact that the real party in interest was  
 13  
 14 COP.<sup>1</sup>

15  
 16           Significantly, however, even if one gives plaintiff the benefit of the doubt and assumes  
 17  
 18 for purposes of the motion that in the past the Church had employees or did business in another  
 19  
 20 state, this says nothing about whether the Church currently does business in *this* state. If we  
 21  
 22 were discussing a corporation, the fact that it did business in Florida in 1995 would not prove it  
 23  
 24 currently does business in Washington.

25  
 26           **2. The Only Factual Evidence Cited by Plaintiff Says Nothing About Whether**  
 27           **COP or the Church Controls the Assets.**

28  
 29           Second, plaintiff opposed the motion by asserting that money collected and spent by local  
 30  
 31 congregations (known as "wards") constitutes "doing business." COP urges the Court to  
 32  
 33 scrutinize the authority cited by plaintiff because the facts he cited do not support his contention.

34  
 35           For example, plaintiff alleged that "the fact that the Mormon Church has assets and does  
 36  
 37 business in the State of Washington is further exemplified by the fact that each ward has  
 38  
 39 financial records and budget." Pl's Memo in Opp. at 10. Plaintiff based this contention on the  
 40  
 41 Church's Handbook of Instructions, which states only that "every stake and ward should prepare  
 42

---

43           <sup>1</sup> For example, one can readily imagine that an employee of COP with a worker's compensation claim might refer to  
 44 his employer as "the Church," just as a person employed at the University of Washington might identify her  
 45 employer as the University, even though technically her employer is the State of Washington.

1 and operate on a budget.” Declaration of Michelle Menely, Ex. L at 9-2. Significantly, the  
 2 Handbook of Instructions does *not* identify the source of such funds or the corporate entity that  
 3 owns and controls such funds. Those facts are provided only in the Second Declaration of Paul  
 4 Rytting:  
 5  
 6

7  
 8  
 9 The checking (disbursement) account used by domestic local  
 10 wards and stakes is owned by the Corporation of the Presiding  
 11 Bishop of the Church of Jesus Christ of Latter-day Saints (“CPB”).  
 12 Funds in this account are provided by COP from contributed  
 13 revenue, including tithing.  
 14

15 Second Declaration of Paul D. Rytting ¶ 8. Plaintiff presents absolutely no contrary evidence.  
 16

17 Corporate control of the financial affairs of the Church is so complete that local wards do  
 18 not even pay the electric bills for the facilities in which Church members worship:  
 19

20  
 21 Local wards and stakes and their bishops and stake presidents do  
 22 not enter into contracts. They do not buy the furniture in their  
 23 buildings. They do not employ the maintenance staff or even pay  
 24 the light bill. They do not own or maintain the properties.  
 25

26 *Id.* at ¶ 13.  
 27

### 28 3. Tithing and Missionary Work Are Spiritual, not Commercial, Practices. 29

30 Third, plaintiff argued that tithing and missionary work constitutes “doing business.” Mr.  
 31 Rytting’s Second Declaration removes any doubt as to the role of tithing and missionary work in  
 32 the Church—these are religious practices, not commercial ones. Plaintiff’s argument to the  
 33 contrary is just that, argument. There is no contrary *evidence* and, in any case, the Church’s  
 34 interpretation of its own doctrine is dispositive. *Presbyterian Church v. Mary Elizabeth Hull*  
 35 *Mem’l Presbyterian Church*, 393 U.S. 440, 451 (1969) (courts cannot “engage in the forbidden  
 36 process of interpreting and weighing church doctrine).  
 37  
 38  
 39  
 40  
 41  
 42  
 43  
 44  
 45

In sum, plaintiff presented no facts from which this Court could conclude the Church does business in this state.

**B. Even if this Court Found a Fact Question as to Whether Service had been Property Accomplished, it is this Court's Duty to Resolve that Issue, not the Jury's.**

**1. Service of Process is a Jurisdictional Issue.**

"First and basic to any litigation is jurisdiction, and first and basic to jurisdiction is service of process." *State v. Breazeale*, 144 Wn.2d 829, 842, 31 P.2d 1155 (2001), quoting *Dobbins v. Mendoza*, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997). "Proper service of the summons and complaint is essential to invoke person jurisdiction over a party." *In Re Marriage of Markowski*, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988).

**2. Jurisdiction is a Question of Law for this Court, Not the Jury.**

"Jurisdiction is a question of law." *City of Spokane v. Spokane County*, 158 Wn.2d 661, 681, 146 P.3d 893 (2006); *see also, Rodriguez v. James-Jackson*, 127 Wn. App. 139, 144, 111 P.3d 271 (2005) ("Whether a plaintiff has satisfied the requirements for service by publication under RCW 4.28.100 is a question of law.")

**3. If a Fact Question Exists as to Whether the Church Has Been Served, the Court Should Resolve the Motion After an Evidentiary Hearing.**

For the reasons stated above, COP strenuously urges that no fact question exists as to whether it does business in this state. If so, the Church cannot be served through an agent, service has not been effected, and the motion to dismiss should be granted.

To the extent the Court continues to believe a fact question exists as to the Church's alleged business dealings, it is the Court's duty to resolve the issue after an evidentiary hearing.

This process has been approved by the Court of Appeals:

We remanded for an evidentiary hearing to determine whether Mr. Spence was served with process and, thus, whether the court had personal jurisdiction over him. After considering conflicting evidence, the trial court determined the summons and complaint were left by a process server with a person of suitable age and discretion at Mr. Spence's residence . . . .

*Woodruff v. Spence*, 88 Wn. App. 565, 566, 45 P.2d 745 (1997).

#### C. Judge Downing Granted COP's Motion.

As the Court is aware, the parties had an identical motion in a similar case pending before Judge Downing. *Rinde v. Corporation of the President, et al.*, Cause No. 06-2-09825-1 SEA. Although his ruling is not binding upon this Court, the Court may be interested to know that Judge Downing granted COP's motion, subject generally to the conditions that COP agrees that Church agents are COP agents and that COP not remove the case to federal court until the Court rules on a motion to amend the complaint to add a Washington resident (COP will oppose it but, if granted, it would destroy diversity).

The form of order submitted by the parties for Judge Downing's approval is attached hereto. As of the date the instant motion was filed, undersigned counsel had not yet received a signed copy.

#### IV. CONCLUSION

For the reasons stated above, COP respectfully requests that this Court vacate its order and grant COP's motion to dismiss the Church. The record presented to this Court includes no facts from which the Court could conclude that the Church was doing business in the State of Washington, and thus service of process was improper. Alternatively, in the event that the Court continues to believe a fact question exists, the order should be vacated pending an evidentiary hearing to determine whether the Church is doing business in the State of Washington.

1 DATED this 15th day of February, 2007.

2  
3 GORDON MURRAY TILDEN LLP

4  
5  
6 By 

7 Charles C. Gordon, WSBA #1773

8 Jeffrey I. Tilden, WSBA #12219

9 Michael Rosenberger, WSBA #17730

10 Attorneys for Defendants

11 The Corporation of the President of the Church  
12 of Jesus Christ of Latter-Day Saints  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

DEFENDANTS' MOTION FOR RECONSIDERATION - 7